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AUG 17 2005

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LERNER GREENERG, PA
P.O. Box 2480
Hollywood, FL 33022-2480

In re Application of	:	DECISION ON THE PETITION
Gerhard Zuch	:	FOR REJOINDER OF THE
Application No. 10/657,927	:	NON-ELECTED METHOD
Filed: September 9, 2003	:	CLAIMS
For: GUIDE TUBE FOR AN INSTRUMENTATION	:	
LANCE EXTENDING INTO A PRESSURE	:	
VESSEL, REACTOR PRESSURE VESSEL,	:	
AND A METHOD FOR PREVENTING THE	:	
ACCUMULATION OF PARTICLES OUTSIDE	:	
THE PRESSURE VESSEL IN A GUIDE TUBE	:	

This is a decision on applicant's petition for the rejoinder of non-elected method claims under 37 CFR 1.182, filed in the United States Patent and Trademark Office, on June 24, 2005. The petition is being handled as a petition under 37 CFR 1.181.

The petition is **DENIED**.

A thorough review of the file reveals that a restriction/election under MPEP § 806.05(e) - Process and Apparatus for its Practice - was mailed to applicant on June 11, 2004. Applicant on July 1, 2004 elected to prosecute claims 1-9 drawn to the apparatus. Applicant within his comments reserved the right to file a divisional application including the method claims 10-12 and/or request a rejoinder under MPEP § 821.04. Since applicant provided no substantive arguments as to the validity of the restriction/election the applicant's election was considered to be *without* Traverse. A notice to that effect was provided in the examiner's non-final Office action of September 17, 2004.

A Notice of Allowability was mailed to applicant on March 22, 2005 with the non-elected *without* Traverse claims 10-12 canceled by examiners amendment. Applicant filed an amendment under 37 CFR 1.312 on March 30, 2005 amending the canceled claims 10-12 citing that the claims should be rejoined under MPEP § 806.05(h) -Product and Process of using. That amendment was disapproved on June 8, 2005 for the following reasons: The original restriction/election requirement set forth by the examiner was under MPEP § 806.05(e). Rejoinder as previously requested by applicant under MPEP § 821.04 is not available under MPEP § 806.05(e). MPEP § 821.04 applies only to MPEP § 806.05(f) and (h). For rejoinder under MPEP § 806.05(e) applicant must include a linking claim (i.e., a means clause in the apparatus claim).

MPEP § 806.05(e) explicitly states "If the apparatus claims include a claim to "means" for practicing the process, the claim is a linking claim and must be examined with the elected invention. If it is ultimately allowed rejoinder is required. See MPEP § 809.04.

Applicant's allowed apparatus claims contain no linking claim (i.e., a means clause). Rejoinder under MPEP § 821.04 is not proper.


Applicant's arguments for rejoinder are actually directed to the restriction requirement of June 11, 2004 as being improper. Applicant did not as previously pointed out by the examiner Traverse the restriction/election. Thus, the restriction/election is held to be Proper and the request for rejoinder to occur under MPEP § 821.04 is not applicable to MPEP § 806.05(e) - Process and Apparatus for its Practice.

The petition for rejoinder of the withdrawn non-elected method claims is **DENIED**.

Any questions or comments with respect to the decision should be forwarded to Director, Donald T. Hajec at the number listed below.



Donald T. Hajec, Director
Patent Technology Center 3600
(571) 272-5150

 jwk/kjd: 8/3/05